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IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

NO. 260.

IVY L. LEONARD AND THOMAS B. LEONARD, Co-partners, Trading as I. L. Leonard & Company,

Appellants,

vs.

SWEPSON EARLE, Conservation Commissioner of Maryland, and Head of the Conservation Department of the State of Maryland,

Appellee.

Appeal from the Court of Appeals of Maryland.

STATEMENT OF BASIS OF JURISDICTION OF SUPREME COURT TO REVIEW ON APPEAL THE JUDGMENT BELOW.

(a) There was drawn in question in this suit by the appellants the validity of Chapter 119 of the Acts of the General Assembly of Maryland of 1927 on the ground of its being repugnant to the Constitution of the United

States, and the decision of the Court of Appeals of Maryland, being the highest court of that state in which a decision in the suit could be had, was in favor of the validity of said Act. The case is within the express language of Section 237 of the Judicial Code (U. S. Code, Title 28, Sec. 344).

(b) The final judgment of the Court of Appeals of Maryland was rendered on April 19, 1928. The appeal was prayed and allowed on June 15, 1928 (Record, pp. 53, 60).

(c) A petition for a writ of mandamus was filed by appellants in the Baltimore City Court to compel appellee to issue to appellants a license to engage in the business of packing oysters in the State of Maryland. The petition alleged that the refusal of appellee to issue the license was based upon Chapter 119 of the Acts of the General Assembly of Maryland of 1927, which purported to require any person desiring to engage in the business of packing oysters in the State of Maryland to obtain a license in the nature and form of a contract between the State of Maryland and the applicant for the payment by the applicant of a license fee of $25, and the delivery by him to the Conservation Department of the State of Maryland of at least ten per cent. of the shells from the oysters shucked in his establishment for the current season. The Act further provided that the Conservation Department should remove on or before the 20th day of August of said season the said shells, or at the discretion of the Conservation Department, receive their equivalent in money, the value being determined at the market value of shells as of the first day of May following the close of the season.

Appellants claimed in their petition that the provision of said Act requiring them to enter into such a contract was null and void because in conflict with the Constitution of the United States, and particularly in conflict with the Fourteenth Amendment thereto (Record, pp 10, 11, 12 and 17). Among the grounds upon which said provisions of the said Act were claimed by appellants to be in violation of the Constitution of the United States was that the requirement that appellants should deliver to the Conservation Department of the State of Maryland one-tenth of all shells coming from oysters packed in their cannery *regardless of where the said oysters came from, that is, whether they came from the waters of Maryland or of other states, or whether they came from bottoms which had been leased by the State of Maryland to individuals*, amounted to a taking of private property for public use without just compensation, and therefore constituted a taking of property without due process of law.

The said petition alleged in paragraph 19 as follows:

> "That all of the provisions of the said Chapter 119 of the Acts of 1927, purporting to declare a license to pack oysters a contract between the licensee and the State of Maryland, by which the licensee shall turn over to the State of Maryland at least ten per cent. of the shells from all the oysters shucked by the licensee or the equivalent thereof in money, in the discretion of the Conservation Department, is in violation of both the Constitution of the United States and the Constitution of the State of Maryland, as hereinbefore recited, and your Petitioners allege that all of said provisions and the whole of said subject of the said Act is invalid and that your Petitioners are entitled to a license as they have applied for, without the said provision as to

shells, or money in lieu of shells being in any way applicable to them, because the said provision is void" (Record, p. 17).

An Answer was filed by appellee, to which a demurrer was interposed by appellants (Record, pp. 30 and 31). As will appear from the opinion of the Baltimore City Court, the question of the validity of Chapter 119 of the Acts of 1927 under the Constitution of the United States was expressly passed upon by that Court (Record, pp. 36 and 37). The decision being against appellants, an appeal was taken by them to the Court of Appeals of Maryland. In that court again the question of the validity of the said Act under the Constitution of the United States was expressly raised and passed upon. The opinion of Chief Judge Bond, speaking for the Court, deals solely with the constitutional objections. In one paragraph of the opinion he says:

"The objections urged on the appeal are that the condition attached to the granting of the licenses under this provision is contrary to requirements of the constitutions of Maryland and the United States, in that it would involve a taking of private property of the packers without compensation, and an unlawful delegation of legislative power in directing that the Conservation Department shall determine whether shells or the equivalent in money shall be required from particular packers; would deny to the packers affected the equal protection of the laws in singling them out as a limited class for the exaction, and also involve a taking of private property without compensation in requiring the packers to keep and store the required ten per cent. of their shells for the Department until it removes them" (Record, pp. 44, 45).

All of these objections were considered by the Court, and its judgment was in favor of the validity of the Act (Record, p. 53). Thus, a case is presented clearly within the provision of the Judicial Code above cited, expressly granting the right to these appellants to have the case reviewed in this court, that is to say, the right to have reviewed.

> "A final judgment * * * in any suit in the highest court of a state in which a decision in the suit could be had, where is drawn in question the validity * * * of a statute of any state on the ground of its being repugnant to the Constitution * * * of the United States and the decision is in favor of its validity."

(d) *King Manufacturing Co. v. Augusta*, decided by this Court May 14, 1928, No. 13 United States Supreme Court, Advance Opinions, page 544.

Respectfully submitted,

WILLIAM L. RAWLS,

Counsel for Appellants.